

### **REMARKS**

Reconsideration of the application is respectfully requested.

Claims 38-49 were previously pending in the application. Claim 1-37 were previously cancelled. Applicant appreciatively acknowledges the Examiner's consideration of the arguments presented in the Applicant's Request for Appeal Brief mailed November 11, 2006. In this response, claims 41 and 47 have been cancelled, claims 38-40, 42-44 and 48-49 have been further amended. No new matters had been introduced. Accordingly, claims 38-40, 42-46 and 48-49 are now pending.

### **EXAMINER'S RESPONSE TO APPLICANT'S ARGUMENTS**

In "Response to Arguments", page 7 item 8 of the above identified Office Action, the Examiner stated, "Additionally, applicant's own admission of prior art whereby hyper-links are activated for a live-streaming audio and video of real-time broadcasts and *the like* (Specification page 2, lines 14-20) reads on claimed embedded code."

Specification page 2, lines 14-20 states "Recently, traditional broadcast entities such as news, radio, sports networks, and the like have engaged in maintaining WEB pages wherein 24 hour live-streaming audio and video of real-time broadcasts and the like is made available to the general public through hyper-links to broadcast servers. By clicking on a provided hyper-link, one may connect to a server and monitor a particular offered broadcast if the user has an appropriate player for playing the downloaded stream."

Applicant respectfully submits the paragraph cited by the Examiner describes a scenario where once a web page has loaded within a browser application, the user selects (by clicking) a hyper-link described as audio content. This is definite user interaction, whereby the user must select an appropriate audio hyper-link from amongst other hyper-links found on the webpage to achieve audio content being distributed to the user's browser module. This selection would consist of the user using a pointer device, most commonly a mouse, and selecting (clicking) on the hyper-link. It also requires that the user has preconfigured their browser to operate an audio player application that is

consistent with the type of streaming media. Thus, once selected, the audio media plays through the audio media application.

Applicant respectfully submits that the text cited from the specification fails to remedy the deficiencies of Mackintosh in regards to claim 38 discussed below in “CLAIM REJECTIONS - 35 U.S.C. § 102”. Even assuming for the sake of argument that the background of the instant application reads on “an accessible site on the Internet,” as required by claim 38, the background fails entirely to disclose, expressly or inherently, “reading embedded code” in the Internet/web site to find “a link to downloadable audio content” and determining that the “link is a link to downloadable audio content by determining presence in the linked content, code for initiating an audio player application” as required by claim 38.

Additionally, assuming for the sake of argument that clicking on a provided hyper-link somehow reads on reading embedded codes to find a link (a point with which Applicant vigorously disagrees), the background of the instant application fails to disclose, expressly or inherently, determining that the URL/link is a link to downloadable audio content by presence of code for initiating an audio player application. The background of the instant application does not teach any sort of determination regarding what type of supplemental material the URL links to, much less a determination based on the “presence of code in the linked content for initiating an audio player application.” Nothing in the background of the instant application even discusses looking for audio player application initialization codes, or using such codes in any fashion. Accordingly, Applicant respectfully notes the Examiner’s “Response to Arguments”, and submits that the background of the instant application fails to cure the deficiencies of Mackintosh discussed below. As such, Applicant submits that claim 38 remains patentable notwithstanding Examiner’s Response to Arguments.

Claim 44 includes language similar to that of claim 38, directed to a method of the present invention. Accordingly, claim 44 is patentable for at least the same reasons as claim 38.

**CLAIM REJECTIONS - 35 U.S.C. § 101**

The Examiner has rejected claims 38-43 under 35 U.S.C. § 101 as being directed toward non-statutory subject matter. With respect to claim 38 the Examiner claims the subject matter recites “a web browser application” is software. Office Action, Page 2, item 4.

In response, the Applicant has amended claim 38 to include a storage media having a plurality of instructions embodied as a browser module stored thereon, which, upon execution, perform operations to achieve a tangible result; thereby resulting in a practical application. Thus amended claim 38 is a storage media element which defines structural and functional interrelationships between the storage media element and the rest of the operations of the storage media which permits the elements functionality of claim 38 to be realized and is thus statutory. Claim 38 shows a useful practical application by a storage media that produces useful and tangible results. Claims 39-43 depend directly or indirectly from amended claim 38 thereby incorporating all of the limitations of claim 38. Therefore, for at least the same reasons as claim 38 overcomes the rejection under 35 USC § 101, claims 39-43 overcome the rejection. Accordingly, the Applicant respectfully requests the Examiner withdraw his rejections to claims 38-43 under 35 U.S.C. § 101.

**CLAIM REJECTIONS - 35 U.S.C. § 102**

In “Claim Rejections – 35 USC § 102,” item 6 on page 3 of the above-identified final Office Action, claims 38-41, 43-47, and 49 have been rejected as being fully anticipated by U.S. Patent No. 6,349,329 to *Mackintosh et al.* (hereinafter “Mackintosh”) under 35 U.S.C. § 102(e).

Rejections against claims 41 and 47 have been rendered moot by their cancellation.

Claim 38 recites “A storage media having a plurality of instructions embodied as a browser module stored thereon, which, upon execution, perform operations comprising:

- (a) submitting a Universal resource Locator (URL) of an Internet site from an Internet-connectable audio-player device to access the Internet site;
- (b) upon accessing the accessible site, reading embedded code in the site to find a link to downloadable audio content, including determining whether a link is a link to downloadable audio content by determining presence in the linked content, code for initiating an audio player application; and
- (c) invoking the link to download audio content on determining that a link is a link to downloadable audio content.”

In contrast, Mackintosh merely teaches a method for providing supplemental material to include with broadcast material. The broadcast material of Mackintosh may, for example, comprise a radio broadcast delivered from a service provider to a user terminal via the Internet. Program data, such as a song identification or type or radio station identification, may be provided to the user terminal along with the radio broadcast. Upon receiving the broadcast material and program data, the user terminal may provide the user with the broadcast material and may use the program data to retrieve information, such as a URL, pertaining to supplemental materials from a data server. The data server may use the program data to determine a URL identifying a location from where the user terminal may retrieve supplemental materials. The supplemental materials may include images, videos, audios, text or other data, which may be played/displayed to the user concurrently with the broadcast material. The data server may then provide the URL to the user terminal, which may use the URL to retrieve the supplemental material.

Even assuming for the sake of argument that the data server of Mackintosh reads on “an accessible site on the Internet,” Mackintosh fails entirely to disclose, expressly or inherently, “reading embedded code” in the Internet/web site to find “a link to

downloadable audio content” and determining that the “link is a link to downloadable audio content by presence in the linked content, code for initiating an audio player application.”

Mackintosh simply does not disclose the reading of embedded codes in the Internet/web site. The user terminal of Mackintosh does not read anything on any Internet/web site, much less read embedded codes. The user terminal merely provides information and receives information. Further, even if the functionality is implemented as a distributed process, with the Internet/web site performing the read operation, Mackintosh still fails to disclose “reading embedded code,” as is claimed in claim 38. The Internet/web site of Mackintosh simply reads data to determine a URL. Nothing in Mackintosh discloses, expressly or inherently, the reading of “embedded codes,” by the Internet/web site.

Even assuming, for the sake of argument, that providing program data and receiving a URL somehow reads on reading embedded codes to find a link (a point with which Applicant vigorously disagrees), Mackintosh fails to disclose, expressly or inherently, determining that the URL/link is a link to downloadable audio content by presence of code in the linked content for initiating an audio player application. Mackintosh does not teach any sort of determination regarding what type of supplemental material the URL links to, much less a determination based on the “presence of code in the linked content for initiating an audio player application.” Nothing in Mackintosh even discusses looking for audio player application initialization codes, or using such codes in any fashion.

Accordingly, Mackintosh fails to anticipate at least the required recitations of claim 38 of “functionality for reading embedded codes in the site to find a link to downloadable audio content” and determining “a link is a link to downloadable audio content by presence in the linked content, code for initiating an audio player application.” Since §102 rejections require clear, unequivocal anticipation of the required limitations, and Mackintosh fails to meet this standard, claim 38 is patentable over Mackintosh.

Claim 44 includes language similar to that of claim 38, directed to a method of the present invention. Accordingly, claim 44 is patentable over Mackintosh for at least the same reasons as claim 38.

Furthermore, claims 39-41, 43, 45-47, and 49 depend from claims 38 and 44, incorporating their limitations, respectively. Therefore, claims 39-41, 43, 45-47, and 49 are patentable over Mackintosh for at least the same reasons as claims 38 and 44.

**CLAIM REJECTIONS - 35 U.S.C. § 103**

In “Claim Rejections – 35 USC § 103,” item 7 on page 5 of the above-identified final Office Action, claims 42 and 48 have been rejected as being unpatentable over Mackintosh in view of U.S. Patent No. 6,012,086 to *Lowell* (hereinafter “Lowell”) under 35 U.S.C. § 103(a).

Lowell fails to cure the above discussed deficiencies of Mackintosh. Therefore, amended claims 38 and 44 remain patentable over Mackintosh even when combined with Lowell.

Claims 42 and 48 depend from claims 38 and 44, respectively, incorporating their limitations. Accordingly, claims 42 and 48 are patentable over Mackintosh combined with Lowell under §103(a).

**CONCLUSION**

In view of the foregoing, Applicant submits that claims 38-40, 42-46, and 48-49 are in condition for allowance. Accordingly, a Notice of Allowance is respectfully requested. If the Examiner has any questions concerning the present paper, the Examiner is kindly requested to contact the undersigned at (206) 407-1518. If any fees are due in connection with this paper, the Commissioner is authorized to charge Deposit Account 500393.

Respectfully submitted,  
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